IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

RCRev..No. 380 of 2006()

RCA.41/2003 of I ADDL. RENT CONTROL APPELLATE AUTHORITY, KOLLAM
RCP.10/2003 of RENT CONTROL COURT, KOLLAM

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REVN. PETITIONER/APPELLANT/RESPONDENT

ABDUL VAHEED,
KURUTHAZHIKATHU, MANAKKATHU MURI,
VADAKKEVILA P.O., KOLLAM.

BY ADV. SRI.V.GIRI

RESPONDENTS: RESPONDENTS/PETITIONERS

1. ISHA BEEVI, W/O. MUHAMMED,
   LAILA MANZIL, THEVALLY WARD, KOLLAM VILLAGE.

2. RASHEED MOHAMMED, S/O. K.A.MOHAMMED,
   -DO- -DO- (NOW RESIDING AT SUBIN MANZIL,
   PATTATHANATHU CHERRY, VADAKKEVILA).

3. IQBAL MOHAMMED, S/O. K.A.MOHAMMED,
   LAILA MANZIL, THEVALLY WARD, KOLLAM VILLAGE.

4. SALEENA RANI, D/O. K.A.MOHAMMED,
   -DO- -DO-

5. K.A.AHAMMED KABIR,
   KURUTHAZHIKATHU VEEDU, MANAKATTU CHERRY,
   VADAKKEVILA VILLAGE, KOLLAM, NOW RESIDING AT
   SULTANA, THEKKEVILA CHERRY, VADAKKEVILA P.O.

6. JALALUDHEEN,
   KURUTHAZHIKATHU VEEDU, MANAKATTU MURI,
   VADAKKEVILA P.O., KOLLAM.

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 13/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R.RAMAN & K.P.BALACHANDRAN,JJ.

R.C.R.NO.380 OF 2006

Dated this the 13th day of November, 2006

O R D E R

Balachandran,J.

The 2nd counter petitioner/tenant before the Rent Control Court is the revision petitioner. He challenges in this revision the correctness, legality and propriety of the order of eviction passed under Section 11(4)(v) of Act 2 of 1965 concurrently by the authorities below.

2. Rent Control Petition has been filed by respondents 1 and 2 for eviction of the petitioner and respondents 4 and 5 under Sections 11(2)(b) and 11(4)(v) of Act 2 of 1965 (hereinafter referred to as 'the Act'). Respondents did not file any objection and were hence set ex parte and eviction was

ordered under section 11(4)(v) of the Acton the basis of the affidavit evidence of the 2nd petitioner and Exts.A1 to A7 produced on the side of the petitioners.

3. It is submitted that a petition for review and setting aside the ex parte order so passed was filed before the rent control court and that was dismissed. But no appeal was filed therefrom. R.C.A.No.41/2003 was filed as against the order of eviction passed under Section 11(4)(v) of the Act. The Appellate Authority considered the contentions and found that the order of eviction passed under Section 11(4)(v) of the Act by the rent controller on the available evidence was proper and dismissed the Rent Control Appeal. The said appeal as also the present revision is filed by the 2nd counter petitioner in the

rent control petition and the 1st and 3rd counter petitioners before the rent control court, who are the co-tenants, along with the petitioner have not chosen to prefer any appeal or revision.

4. It is the case of the petitioner (2nd counter petitioner in the RCP) that the rent control court has not afforded an opportunity to him to file objections and to contest the matter and that the petitioner was bed-ridden on account of partial paralysis. The contention so advanced is practically not on merits of the case, though the appeal and revision are filed advancing challenge against the order passed under Section 11(4)(v) of the Act on merits only. However, we consider the submission made on behalf of the petitioner as regards the ailment, which is stated to have

prevented the petitioner from filing objections before the rent control court. It is submitted by the learned counsel for the petitioner that the petitioner was undergoing treatment as an in-patient. Photocopy of the certificate dated 10/9/1993 issued by one Dr. C.Padmakumar, Regn.No.4881, a practitioner in indigenous medicine, shows that the petitioner was having partial paralysis from 24/8/2003. The certificate shows only that he was advised treatment and not that he was admitted as an in-patient. Second certificate produced shows that from 5/9/2003 he was admitted as an in-patient. Even though it is submitted that the said ground was being examined by the Appellate Authority, the certificates were not produced before the Appellate Authority. Even before this Court the petitioner has not

produced any medical certificate and only photostat copies were being submitted for perusal. It is submitted that before the rent control court, medical certificate was produced in the restoration matter, but the Doctor, who issued the certificate, was not examined.

2. In the circumstances, we do not see any reason to interfere with the order passed by the Rent Control Court as affirmed by the Appellate Authority on the merits of the case. The order passed by the rent control court as affirmed by the Appellate Authority does not suffer any infirmity, as the order was being passed on the evidence adduced by the petitioner, which prima facie, was sufficient to satisfy the court as regards the ground for eviction under Section 11(4)(v) of the Act, in

the absence of any objection on the side of the counter petitioners in that court. There is no illegality, impropriety or irregularity in the orders of the authorities below. This revision in the circumstances is devoid of merit and is dismissed.

P.R.RAMAN,
Judge.

K.P.BALACHANDRAN,
Judge.

kcv.